

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 834
3336983

BETWEEN LYNDA COE
 Applicant

AND ACCESS COMMUNITY
 HEALTH LIMITED
 Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Liz Lambert, advocate for the Applicant
 Jack Rainbow, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 5 September 2025 from the Applicant
 26 September 2025 from the Respondent

Determination: 19 December 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] A preliminary issue as to whether the Authority is able to investigate Ms Coe's disadvantage personal grievance claim has arisen. It is not clear whether Ms Coe's communications with her employer raised grievances with Access Community Health Limited (ACHL). ACHL says Ms Coe did not raise a personal grievance claim at any time during her employment or during the applicable employee notification (90-day) period and does not consent to the grievances being raised out of time.

[2] Ms Coe is not seeking an extension to file her claims based on exceptional circumstances because she believes she filed her personal grievance via a letter on 12 November and at a meeting on 13 November 2021. Her grievances were lodged in the

Authority within the three years which allows her to take action on personal grievances (s 114(6) of the Act) and she says they should proceed.

The Authority's investigation

[3] The parties agreed this application would be heard on the papers and written submissions were lodged from both parties.

Background

[4] Ms Coe's claims arise from vaccination being mandated in her workplace. Her employment was terminated after vaccination for COVID-19 became a legal requirement for her to attend work. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) was extended on 25 October 2021 to include groups in the health and disability sector. Under the Order Ms Coe was an "affected person" and unable to carry out her work unless she was vaccinated. Ms Coe did not wish to be vaccinated.

[5] ACHL provides in-home and community health care and Ms Coe was employed as a support worker in 2015 until 2 March 2022 when her employment was terminated. In the course of ACHL's consultation about the impact of the Order it emailed Ms Coe on 26 October 2021 noting among other things that if Ms Coe remained unvaccinated from 15 November 2021, she would be temporarily stood down while the parties worked through a process to determine her ability to perform her role and whether any alternative working arrangements were available.

[6] On 12 November ACHL wrote to Ms Coe informing her she was required to be vaccinated against COVID-19 by 1 January 2022 and that under the Order if she was not vaccinated with the first dose by the end of 15 November 2021, she would not be able to work from 11.59pm on 15 November 2021. ACHL wanted to meet with Ms Coe and she was advised that her employment could be terminated.

[7] Ms Coe responded by email the same day attaching a letter that recorded Ms Coe did not wish to be vaccinated for COVID-19 because she did not consider the vaccination was safe enough. Sections of the Health and Safety at Work Act 2015 (HSWA) about employer's obligations and duties to provide a safe workplace were set out including what a notice under s 83 of the HSWA is. Ms Coe then stated she was refusing to attend work because she did not believe the work place to be safe for her.

[8] She also conveyed her employer was not responsible for her personal health:

“you as my employer may become liable to me for personal grievance claims for breach of contract and discrimination on the basis of your demands for masking, and for vaccinations to be carried out upon me. It could be argued that you have extended the role of the PCBU into the doctor’s office itself.

[9] As a consequence of the right for workers under s 83 of the HSWA to cease or refuse to carry out unsafe work, Ms Coe ended the letter saying she was refusing to work until the risks in the workplace were remedied or mitigated and suggested alternatives to vaccination in the form of atmospheric testing and breath analysis.

[10] There was a meeting between the parties the next day (13 November). ACHL say Ms Coe confirmed at that meeting she was not vaccinated as she did not believe there was sufficient information about the vaccine to enable her to receive it. It was agreed ACHL would pursue a temporary service disruption exemption pursuant to clause 12A of the Order for Ms Coe. This provision provided that a PCBU may by notice in writing to the Minister, apply for an exemption for a person specified in the application ACHL say that was ultimately declined but Ms Coe says she does not believe ACHL made sufficient arrangements for her application, noting that a large number of other ACHL employees were granted this exemption shortly after.

[11] Nonetheless on 15 November Ms Coe was stood down because she could not lawfully perform her role but the parties continued to engage. They met again on 25 January 2022 and on 2 February, ACHL sent a notice of termination to Ms Coe.

[12] Ms Coe lodged her statement of problem in the Authority on 11 November 2024. There was no contact between the parties after termination of Ms Coe’s employment until the lodging of the grievances in the Authority.

Ms Coe’s submissions

[13] Ms Coe relies on two cases¹ *Preece v Synlait Milk Ltd* and *Taniwha v Te Runanga o Toa Rangatira Inc*, where the Employment Court held grievances related to failures to take a vaccine were raised in time. Ms Coe submits that what she conveyed in the 12 November 2021 letter above and at the online meeting on 13 November was

¹ *Preece v Synlait Milk Ltd* [2024] NZEmpC 238 and *Taniwha v Te Runanga o Toa Rangatira Inc* [2023] NZEmpC 140.

similar to both the *Preece* and *Taniwha* cases and therefore sufficient in accordance with the established test to show a personal grievance was raised.

[14] *Taniwha v Te Runanga o Toa Rangatira Inc* was a case where the Court concluded that despite the situation being unclear there was sufficient information provided by Mr Taniwha as to his strong views about not being vaccinated, his concerns about being vaccinated and that he wished his employer to address all of his concerns including:

- (a) Coercion to become vaccinated;
- (b) Failing to apply for an exemption for Mr Taniwha under cl 12(a) of the Vaccination Order;
- (c) Issues about a suspension from work being unjustified;
- (d) Unilateral variation of the contract by requiring vaccination or else termination would occur; and
- (e) Unfair and bullying treatment.

[15] Mr Taniwha's role fell under the same Order as Ms Coe and he was notified by his employer that all staff needed to be vaccinated by 15 November 2021. After receiving a letter advising him of this he had a telephone conversation with human resources. He followed up with a letter saying he did not wish to be vaccinated with the reasons and said he was not able to give his full consent to undergo a medical procedure. He had also applied for an exemption that was unsuccessful.

[16] After reviewing the letter and the transcript of the phone call with human resources the Court found what had been communicated was sufficient to have raised a grievance.

[17] In *Preece v Synlait Milk Ltd* a letter that was in effect a notice under s 83 of the Health and Safety at Work Act 2015 was sufficient to raise a personal grievance with an employer. It was also noted it is not relevant whether the employee knew they were raising a personal grievance by submitting the letter:

While I acknowledge that not every complaint or criticism of an employer will constitute a personal grievance, before the Court, Synlait accepted that Ms Preece's email made it clear she objected to the vaccination policy and wanted Synlait to stop requiring people to be vaccinated. Although the email was framed as a "s 83 letter" and referred to a potential personal grievance in the future, it was sufficient to raise a personal grievance about the vaccination policy, and in particular about the requirement in the policy that Ms Preece be vaccinated to work at Synlait. Ms Preece may not have intended to raise a grievance at the time she sent the email, but that is not determinative. Having raised her grievance within the required timeframe, and in the absence of a settlement of that grievance, Ms Preece is entitled to pursue it in the Authority.

[18] It is submitted on Ms Coe's behalf that she raised a number of issues:

- (a) The employer had no right to take an interest in her personal health choices outside of the workplace;
- (b) Dictating vaccination may result in a personal grievance or breach of contract claim;
- (c) The employer was taking over the role of doctor in the workplace and asked them to desist saying the workplace was her employer's rightful sphere of influence not her body;
- (d) Concerns about the employer's duty as a PCBU to provide a safe workplace noting no environmental checks such as swabbing of surfaces or air quality had been carried out and she required under s 83 of the HSWA that this was remedied before she returned to the listed workplaces (which were a number of client's homes that were listed).
- (e) Failing to provide a safe workplace by the application of testing for the virus using swabbing and breathalysing.

[19] Ms Coe also says ACHL did not respond to concerns about her personal safety or its responsibility as a PCBU to test the workplace. It met with her on 13 November at an online meeting to discuss her ongoing employment and she reiterated her medical concerns about the vaccine at that meeting.

Ms Coe has six claims in her statement of problem

[20] Ms Coe has lodged six grievances in the Authority saying she was unjustifiably disadvantaged by ACHL when it:

- (a) Unilaterally varied her employment agreement to require her to receive COVID-19 vaccination;
- (b) Failed to respond to Ms Coe's notice under s 83 of the Health and Safety at Work Act 2015 (HSWA) that she was at imminent risk from the requirement to be vaccinated in the workplace;
- (c) Breached health and safety obligations when relied on vaccination as a control for COVID-19, failed to ensure the vaccination was safe, attempted to coerce Ms Coe to be vaccinated and failed to test work surfaces or the atmosphere of her workplace;
- (d) Coerced Ms Coe to be vaccinated by threatening her that she would lose her job if she did not comply with the directive which was also a breach of ACHL's good faith obligations.
- (e) Attempted to bargain Ms Coe's job in return for compliance with ACHL's policy which amounted to unfair bargaining under s 68(2) of the Employment Relations Act 2000 (the Act)
- (f) Required vaccination when Ms Coe was subject to workplace testing to identify COVID-19 and failing to offer testing or medical examinations to detect COVID-19.

[21] There are some inconsistencies between what Ms Coe now says she raised at the time and the claims lodged in the Authority to the extent it is unlikely all of the claims in the statement of problem can be said to have been raised by Ms Coe in November 2021.

What constitutes the raising of a personal grievance?

[22] A personal grievance must be raised within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later.² A grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

² Employment Relations Act 2000, s 114(1) and (7)(b).

[23] Personal grievance provisions are designed to allow the parties to raise and discuss problems directly with each other to ensure they are able to be resolved quickly without the need to resort to formal procedures.

[24] What constitutes the raising of a personal grievance is set out in *Chief Executive of Manukau Institute of Technology v Zivaljevic*:

[36] The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

[37] It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

[38] It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

What were the communications?

[25] ACHL was acting in accordance with the Order. All employees had to be vaccinated or to have the first dose of the vaccination by 15 November 2021 and Ms Coe entered into communications with ACHL in light of that requirement. Ms Coe's letter in response was dated 12 November and the online meeting with her on 13 November are the communications to be considered.

[26] ACHL says the communications raised concerns but were not sufficient to raise grievances. Not enough information was conveyed about the nature of any alleged grievances for ACHL to understand the concerns raised were in fact grievances and what Ms Coe wanted ACHL to do about those.

[27] ACHL also say the communications must be understood in the context of an employer-led initiative where consultation with its employees had been entered into

about mandated vaccination. ACHL emphasised it had no scope to modify or decline to apply the vaccination requirement contained in the Order.

[28] ACHL reminded the Authority that in *Creedy v Commissioner of Police*, Chief Judge Colgan held that the person grievance procedures in the Act are:³

...aimed not at preserving rights to litigate past or current injustices at some indefinite future time at which the employee may elect to review them. Rather, the procedures exist to have alleged injustices identified and addressed quickly, and initially at least, informally, and directly between employer and employee...

[29] ACHL also says *Preece v Synlait* and *Taniwha v Te Runanga o Toa Rangatira Inc* are sufficiently different from Ms Coe's case that she cannot rely on those as examples the Authority should follow in her case.

[30] Ms Coe says the communications were sufficient to cross the line between raising concerns or complaining to the raising of a personal grievance. She says her letter raised concerns about her personal safety and ACHL's responsibility to test the workplace to ensure it was safe for her in light of COVID-19 circulating in the community.

[31] There is no formal record of the meeting available to the Authority but Ms Coe's submission is that she reiterated the content of the letter at the meeting.

Ms Coe did not raise a personal grievance with ACHL

[32] While Ms Coe is clearly raising concerns, to be a grievance there must be sufficient information provided for the employer to understand not only the issue that is a grievance but also how the employee wants it remedied. This includes whether the nature of the complaint was one within the meaning of s 103 of the Act, whether the employee complied with s 114(2) of the Act by conveying the substance of the complaint to the employer¹ and whether an employee had done enough to inform his/her employer of the nature of the alleged grievance.⁴

³ *Creedy v Commissioner of Police* [2006] ERNZ 517 at [39].

⁴ *Idea Services Ltd (in Statutory Management) v Barker* [2012] NZEmpC 12 at [41].

[33] The letter commences with both the requirement to be vaccinated together with the workplace being unsafe in this way:

I am writing to you because I am very concerned that you require me to be vaccinated to work at [various addresses] even though those places do not comply with the Health and Safety at Work 2015 [the Act] in this current pandemic.

[34] There is reference to the possibility of a personal grievance or breach of contract claim as a future event as there was in *Preece*. Personal grievances as a future event have been considered in the past to not reach the threshold to have raised a grievance, although all the circumstances of a communication are considered. Ms Coe also considered her workplace was unsafe because of risks she had identified. She was refusing to attend work until these risks were mitigated in accordance with s 83 of the HSWA. Her suggested remedy for this was atmospheric testing and testing visitors to ensure there was no ongoing contamination. This tends to suggest the workplace risk was COVID-19.

[35] It was submitted Ms Coe's letter conveyed clearly that the vaccine was unsafe for her to take and constituted a hazard in the workplace because it was being pushed as a condition of employment. I accept the letter set out Ms Coe's view vaccination was unsafe for her but there was insufficient information to glean that vaccination was also a hazard in the workplace because it was being pushed on her as a condition of employment.

[36] ACHL submit there are material differences between Ms Coe's letter and the letter in *Preece* and on comparison those differences are relevant. Ms Coe did not refer to a lack of consultation, coercion to be vaccinated or complain that her employment agreement could not permit vaccination as a requirement for work. It is clear she did not wish to be vaccinated to attend work and that was the subject of further discussion with ACHL as part of its consultation with her. The issue raised was captured in the first sentence which was a concern she was required to be vaccinated to work even though those places did not comply with the HSWA. The remedy she was seeking to mitigate the risk of COVID-19 in the workplace was workplace testing and at best her letter can be taken to mean she wanted that to be discussed as an alternative to vaccination for her.

[37] There was insufficient information for ACHL to know these issues were being raised as grievances and Ms Coe's 12 November 2021 did not raise disadvantage personal grievances.

Were grievances raised at the online meeting?

[38] ACHL accepts it was conveyed at the meeting on 13 November that Ms Coe did not wish to be vaccinated because there was not enough information about the vaccine to allow her to confidently take it but says this is different from raising a grievance and I agree with that. I did not understand Ms Coe to be submitting that anything in addition to what she recorded in the letter was discussed at the meeting.

[39] It was agreed at the meeting that an exemption would be applied for so the parties can be said to have agreed alternatives were being sought at the conclusion of the 13 November meeting. Ms Coe's submissions now say it was not clear ACHL applied for Ms Coe's exemption. ACHL say it did. It is not necessary to consider that further because Ms Coe has not raised a grievance about that.

[40] Ms Coe did not raise a personal grievance at the meeting on 13 November 2021 because no new information was conveyed to ACHL other than what was recorded in the letter sent by email the day before.

[41] I also note that even if I had considered Ms Coe to have raised grievances in her communications, the claims in the statement of problem went well beyond what was articulated in the 12 November letter. For example the 12 November letter did not:

- (a) complain that ACHL had unilaterally varied her employment agreement to require her to receive the COVID-19 vaccination;
- (b) assert Ms Coe was coerced to be vaccinated by threatening she would lose her job if she did not comply with the directive;
- (c) convey that ACHL had attempted to bargain Ms Coe's job in return for compliance with ACHL's policy which amounted to unfair bargaining;

Outcome

[42] Ms Coe's personal grievance claims were not raised with ACHL within the requisite 90 day time frame and as a consequence Ms Coe's claims in the Authority cannot proceed.

Costs

[43] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[44] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Access Community Health Limited may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Ms Coe will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[45] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁵

Sarah Kennedy-Martin
Member of the Employment Relations Authority

⁵ www.era.govt.nz/determinations/awarding-costs-remedies